

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REBECCA BUSSA,

Plaintiff,

v.

CHASE HOME FINANCE, LLC; et al.,

Defendants.

3:10-cv-0782-LRH-VPC

ORDER

Before the court are plaintiff Rebecca Bussa's ("Bussa") motion to remand (Doc. #6¹) and motion for attorney's fees (Doc. #7). Defendants filed an opposition (Doc. #11) to which Bussa replied (Doc. #12).

I. Facts and Procedural History

In June, 2003, Bussa purchased real property through a mortgage note and deed of trust originated by non-party CTX Mortgage Company ("CTX"). The amount of the loan was \$60,001.00. Eventually, Bussa defaulted on the mortgage note and defendants initiated non-judicial foreclosure proceedings.

Subsequently, Bussa filed a complaint in state court against defendants alleging six causes of action: (1) contractual breach of the covenants of good faith and fair dealing; (2) tortious breach

¹ Refers to the court's docket entry number.

1 of the covenants of good faith and fair dealing; (3) declaratory relief; (4) fraud; (5) negligent
2 misrepresentation; and (6) Nevada Unfair and Deceptive Trade Practices Act, NRS 598.0923.
3 Doc. #1, Exhibit A. Defendants removed the action to federal court based upon diversity
4 jurisdiction. Doc. #1. Thereafter, Bussa filed the present motion to remand. Doc. #6.

5 **II. Legal Standard**

6 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
7 courts of the United States have original jurisdiction, may be removed by the defendant or the
8 defendants, to the district court of the United States for the district and division embracing the
9 place where such action is pending.” 28 U.S.C. § 1441(a). A district court has original jurisdiction
10 over civil actions where the suit is between citizens of different states and the amount in
11 controversy, exclusive of interest and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a). In a diversity
12 case, if a complaint does not specify the amount of damages, “the removing defendant bears the
13 burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds
14 \$[75],000.00.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

15 Removal of a case to a district court may be challenged by motion. 28 U.S.C. § 1441(c). A
16 federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal statutes are
17 construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil & Gas*
18 *Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
19 1992).

20 **III. Discussion**

21 Bussa concedes that the parties are diverse for diversity jurisdiction, but argues that
22 defendants’ notice of removal is insufficient to prove, by a preponderance of the evidence, that the
23 amount in controversy exceeds \$75,000.00. Bussa’s complaint only requests damages in excess of
24 \$10,000.00 as required under the Nevada Rules of Civil Procedure. Further, Bussa alleges that the
25 total loan amount at issue in the mortgage note was only \$60,001.00. Thus, on the face of Bussa’s
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1 complaint, it is not facially evident that the amount in controversy exceeds \$75,000. Therefore,
2 Bussa contends that the exercise of diversity jurisdiction over this matter is improper.

3 In opposition, defendants argue that the amount in controversy is satisfied because Bussa is
4 also requesting punitive damages and attorney's fees in her complaint. Generally, the amount in
5 controversy may be satisfied by all of a plaintiff's claims for damages, including attorney's fees and
6 punitive damages. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). However, the
7 mere possibility of an award of attorney's fees or punitive damages is not sufficient to prove that
8 the amount in controversy has been met. In order to meet their burden for removal, defendants must
9 present evidence indicating the amount of punitive damages the Bussa seeks will, more likely than
10 not, exceed the amount needed to increase the amount in controversy to \$75,000. *See McCaa v.*
11 *Massachusetts Mutual Life Insurance Company*, 330 F. Supp. 2d 1143, 1149 (D. Nev. 2004); *see*
12 *also, Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992).

13 Here, defendants have failed to provide the court with sufficient evidence to establish that
14 the amount in controversy will be exceeded by an award of punitive damages. Further, defendants
15 have not shown that an award of punitive damages is a supportable claim in this action, nor has it
16 established that any punitive damage award, if awarded, is more likely than not to bring the amount
17 in controversy over \$75,000. Thus, the court finds that defendants have failed to meet their burden
18 to prove that the amount in controversy has been met. Accordingly, the court shall grant Bussa's
19 motion and the matter shall be remanded for lack of jurisdiction.

20 **IV. Attorney's Fees**

21 An order remanding a case to state court may include an award of attorney's fees. 28 U.S.C.
22 § 1447(c). A district court has wide discretion to grant attorney's fees. *Moore v. Permanent*
23 *Medical Group*, 981 F.2d 443, 446 (9th Cir. 1992). Fees may be awarded when removal, "while
24 fairly supportable, was wrong as a matter of law." *Balcorta v. Twentieth Century-Fox Film Corp.*,
25 208 F.3d 1102, 1106 n.6 (9th Cir. 1999).

1 Here, the court declines to exercise its discretion in awarding attorney's fees because
2 defendants' removal, though ultimately unsuccessful, was arguable in light of Bussa's six separate
3 claims for relief and additional requests for punitive damages and attorney's fees.
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5 IT IS THEREFORE ORDERED that plaintiff's motion to remand (Doc. #6) is GRANTED.
6 The present action, 3:10-cv-0782-LRH-VPC, is REMANDED to the Second Judicial District Court
7 for the District of Nevada.

8 IT IS FURTHER ORDERED that plaintiff's motion for attorney's fees (Doc. #7) is
9 DENIED.

10 IT IS FURTHER ORDERED that plaintiff's request for submission (Doc. #14) is DENIED
11 as moot.

12 IT IS SO ORDERED.

13 DATED this 12th day of May, 2011.



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16 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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